

Before

James C. Peck, Jr.
Arbitrator

In the Matter of Arbitration Between:

FRATERNAL ORDER OF POLICE, LODGE #5

V.

AAA Case No. 01-16-0000-6568
P/O Stacey Gonzalez (suspension)

THE CITY OF PHILADELPHIA

Hearing Dates: February 8, 2017
Decision Date: March 7, 2017

Appearances:

For the Union - Marc L. Gelman, Esq., Jennings Sigmond, PC

For the City of Philadelphia - Frank E. Wehr II, Esq., Asst. City Solicitor,
City of Philadelphia, Law Department

Procedural Background

This arbitration was conducted pursuant to a collective bargaining agreement between the City of Philadelphia, Pennsylvania and Fraternal Order of Police Lodge, No. 5, which is the recognized exclusive collective bargaining representative for a unit of police officers employed by the City of Philadelphia.

The City of Philadelphia and FOP Lodge 5 are parties to a collective bargaining agreement with a term of July 1, 2014 through June 30, 2017.¹ This agreement contains, among other things, a Grievance-Arbitration procedure (Article XXI) culminating in final and binding arbitration under the auspices of the American Arbitration Association.

The instant matter arises from a grievance filed by the Fraternal Order of Police on December 11, 2015 on behalf of suspended Police Officer Stacey Gonzalez, alleging that Officer Gonzalez had been suspended for one day without just cause.² Officer Gonzalez received a Notice of Suspension³ which alleged that Gonzalez had engaged in conduct in violation of Section 5-008-10, NEGLECT OF DUTY, specifically, *“Unauthorized absence from assignment.”*

This grievance was subsequently denied by the City, and when the issues of this dispute could not be resolved under the terms of the contractual grievance-arbitration procedure, the underlying grievance was referred to the American Arbitration Association for selection of a neutral arbitrator. Subsequently, by letter dated April 7, 2016, the undersigned was appointed arbitrator in this matter.

An evidentiary hearing was conducted on February 8, 2017, at offices of the American Arbitration Association, 230 South Broad Street, Philadelphia, PA 19102 pursuant to a Notice of Hearing which issued on August 30, 2016. Both the Union and the City were represented by counsel, and at hearing were afforded the opportunity to examine and cross-examine witnesses, and to introduce relevant exhibits. The Grievant, Police Officer Stacey Gonzalez, was present and participated fully in the proceeding. Both parties made oral arguments on the record.

¹ See City Exhibit 3, received into evidence.

² See City Exhibit 1-A, received into evidence.

Issues

Did the City of Philadelphia violate the express terms of the collective bargaining agreement by suspending Police Officer Stacey Gonzalez without just cause? If the City is found to have violated the terms of the collective bargaining agreement, what is the appropriate remedy?

Introduction

This case is about the one-day suspension of Police Officer Stacey Gonzalez, who was disciplined for allegedly neglecting her duties, by leaving her assigned position as the Cell Block Attendant in the 9th District CCTV, for more than an hour and a half without authorization.

Evidentiary Summary

Police Officer Stacey Gonzalez, the Grievant herein, was assigned to the 22nd District Headquarters, at 17th Street and Montgomery Ave in the Fairmont/North Philadelphia Area, on October 2, 2014. However, Officer Gonzalez was evidently detailed or loaned to the adjoining 9th Police District, located at 401 N. 21st Street, where she was working as a Cell Block Attendant during the events which gave rise to the instant grievance.

As Cell Block Attendant, Officer Gonzalez was responsible for searching female prisoners who were brought to the District for detention.

³ See City Exhibit 12, received into evidence.

On October 2, 2014, Officer Gonzalez was scheduled to work from 2:30 PM to 10:45 PM. During this shift assignment, by her own admission⁴, Gonzalez left the 9th District building at about 5:45 PM, with the intention of going to the WaWa Convenience store next door to get something to eat. Gonzalez admits that she did not request permission of her supervisor to leave the building, nor did she advise her supervisor that she was leaving. She claims that she informed a co-worker, Police Officer H [REDACTED] R [REDACTED] that she was leaving the cellblock. Gonzalez left the building without taking a police radio with her. At the time of her departure, there were prisoners in the cellblock, who were being supervised by Officers R [REDACTED] and P [REDACTED].

Shortly after leaving the 9th District, Officer Gonzalez received a personal phone call from a sales clerk at Dahlia's, a jewelry and clothing boutique located at 2003 Walnut Street, Rittenhouse Square, in the Center City area; advising that several articles of liturgical attire that Officer Gonzalez had ordered previously had arrived.

Officer Gonzalez then modified her plans, taking her personal vehicle to Rittenhouse Square to pick up her purchase, which she stated she needed for a religious observance scheduled for the following evening. This visit took longer than Officer Gonzalez anticipated, due to traffic and the sales clerk's difficulty in locating the order. Officer Gonzalez did not return to the 9th District until about 7:15 PM, more than 90 minutes after she left the District.

Officer Gonzalez's absence did not go unnoticed. Police Officer D [REDACTED] P [REDACTED], who was also working the 9th District lockup, noticed that Gonzalez had left the building around 5:00 PM and was still missing at about 6:50 PM, when a female prisoner arrived at the District. Officer Gonzalez could not be found to perform a search. Officer P [REDACTED] then called Corporal K [REDACTED] C [REDACTED], who worked on the second floor of the 9th District, to advise that Gonzalez was missing and that he needed a female

⁴ See Exhibit C-8, received into evidence.

officer to search a prisoner. Cpl. C [REDACTED] performed the prisoner search, but also commenced a search for the missing Officer Gonzalez.⁵

Among other things, Cpl. C [REDACTED] contacted the 22nd District to have them call Officer Gonzalez's cellphone. Evidently, Cpl. C [REDACTED] was concerned that a police officer, Gonzalez, had gone missing and could not be located. About 15 minutes later, Officer Gonzalez phoned to advise that she was next door at the WaWa store getting her food, and that she would be returning shortly.⁶

In the interim, Cpl. C [REDACTED] had reported Gonzalez's absence up the chain of command to Lt. M [REDACTED] B [REDACTED]. Lt. B [REDACTED] took several steps to address the issue: First, he summoned a female police officer off street patrol to help staff the lockup until Gonzalez could be located. Secondly, Lt. B [REDACTED] and Cpl. C [REDACTED] went next door to the WaWa store next door to look for Gonzalez. She was nowhere to be found.

Lt. B [REDACTED] was also concerned that an officer was missing, and sent a text to his commanding officer, Capt. F [REDACTED] C [REDACTED], advising him of Gonzalez's absence. Lt. B [REDACTED] asserts that Gonzalez returned to the District at about 7:25 PM, at which time the female Officer who had been called in off patrol was sent back out onto the street.⁷

Capt. C [REDACTED] was displeased with Gonzalez's unapproved absence for several reasons: First, Gonzalez had left the District without informing her supervisor, Cpl. C [REDACTED], that she would be gone for an extended period of time. Secondly, her absence required that a female officer be pulled off street patrol to cover the cell room. Thirdly, the absence of Officer Gonzalez caused a safety issue for the two other officers assigned to the cell room. Capt. C [REDACTED] concluded that discipline was warranted, and wrote a *Request for Formal Disciplinary Action* on November 7, 2014.⁸

⁵ Although Cpl. C [REDACTED] did not testify at hearing, her statement provided during the investigation establishes that she undertook the search of the female prisoner. See Exhibit C- 6, in evidence.

⁶ See Exhibit C-6, received into evidence.

⁷ See Exhibit C-5, received into evidence.

⁸ See Exhibit C-9, received into evidence.

As a result of Capt. C [REDACTED]'s recommendation, Officer Gonzalez was summoned before a *Police Board of Inquiry* (PBI) panel on July 2, 2015. The Police Board of Inquiry, consisting of three experienced Police Officers, unanimously concluded that the Grievant had violated Article 5, Section 008-10 of the Philadelphia Police Disciplinary Code⁹, specifically, *unauthorized absence from assignment*. The Police Board of Inquiry, which could have imposed discipline ranging from a reprimand to a 5-day suspension for this infraction, recommended a one-day suspension.

Analysis and Discussion

As stated in the introduction of this Award, the issue to be decided herein is whether the City violated the terms of the collective bargaining agreement by suspending Police Officer Gonzalez for one day.

The facts in this case are not in dispute. Officer Gonzalez admitted in her testimony that she left her assigned post for more than 90 minutes without informing her supervisor, Cpl. C [REDACTED], that she would be absent. This dereliction of duty caused considerable consternation among her fellow officers, who were concerned about Gonzales's safety and well-being, especially when they were unable to reach her by police radio. This absence also lead to another female patrol officer being called in off patrol duty to handle the search of female prisoners in Gonzalez's absence. Finally, this absence left the 22nd District lockup one officer short of being fully staffed, creating additional risk for the two officers who remained.

Unauthorized absence from assignment is punishable by a range of disciplinary actions. The Police Board of Inquiry recommended a punishment of a one-day suspension, which is consistent with the Disciplinary Code, and proportional to the misconduct engaged in by the Grievant, given that it was Officer Gonzalez's first

⁹ See Exhibit C-11, received into evidence.

offense. Then-Police Commissioner Ramsey agreed with the Police Board of Inquiry's recommendation of a one-day suspension.¹⁰

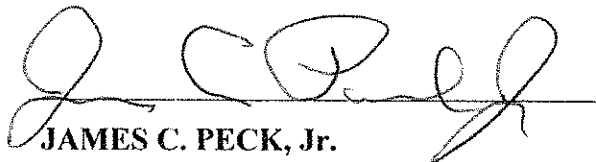
I have concluded that Officer Gonzalez was in violation of departmental policy, with regard to her unexcused absence from her duty post on October 2, 2014, and is deserving of discipline. The imposed penalty of a one-day suspension is reasonable given the nature of the infraction, and is consistent with the provisions of the Disciplinary Code. A mere reprimand would be unlikely to impress upon Officer Gonzalez the seriousness of her misconduct.

I am, therefore, sustaining the decision of Commissioner Ramsey to suspend the Grievant for one day for violating the Disciplinary Code, specifically by being AWOL from her assigned job duties.

AWARD

Based on the evidence, and the discussion as set forth above, the undersigned makes the following award:

The grievance alleging that the Police Department violated the collective bargaining agreement by suspending Police Officer Stacey Gonzalez is hereby DENIED.



JAMES C. PECK, Jr.

Arbitrator

Wallingford, Pennsylvania

March 7, 2017

¹⁰ See Exhibit C-12, received into evidence.